Supreme Court, U.S.
FILED
JAN 8 198
JOSEPH F. SPANIOL, JR.
CLERK

No. 87-970

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

EDWARD and NANCY HUGHES,

Petitioners,

v.

UNITED VAN LINES, INC.,
and 291 SISSER BROS., INC.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

RESPONDENTS' BRIEF IN OPPOSITION

JAMES W. TALLANT
ARTHUR A. SULLIVAN •
JAMES W. TALLANT &
ASSOCIATES, LTD.
One North LaSalle Street
Suite 2140
Chicago, Illinois 60602
(312) 332-0002
Attorneys for Respondents

• Counsel of Record

Midwest Law Printing Co., Chicago 60611, (312) 321-0220

QUESTIONS PRESENTED FOR REVIEW

1. Does the Carmack Amendment to the Revised Interstate Commerce Act preempt state and common law remedies for loss or damage to interstate shipments.
2. Is there such a conflict between the circuits as to warrant certiorari.
3. Does the "material deviation" doctrine invalidate a liability limitation under the Carmack Amendment.
4. Is a carrier of household goods in interstate commerce to be held to a standard of strict compliance with applicable federal regulations.

TABLE OF CONTENTS

	PAGE
QUESTIONS PRESENTED FOR REVIEW ..	i
TABLE OF AUTHORITIES	iii
STATEMENT OF THE CASE	1
SUMMARY OF ARGUMENT	5
REASONS FOR DENYING THE WRIT:	
I.	
THE SUPREME COURT HAS CONSISTENTLY RULED THAT THE CARMACK AMENDMENT TO THE INTERSTATE COMMERCE ACT PREEMPTS STATE AND COMMON LAW REMEDIES FOR LOSS OF AND/OR DAMAGE TO INTERSTATE SHIPMENTS	6
II.	
THERE IS NOT SUCH A CONFLICT BETWEEN THE DECISIONS OF THE CIRCUITS AS TO WARRANT CERTIORARI	10
III.	
MATERIAL DEVIATION IS NOT A BASIS FOR INVALIDATING A LIABILITY LIMITATION UNDER THE CARMACK AMENDMENT .	13
IV.	
CARRIERS SHOULD NOT BE HELD TO A LEVEL OF STRICT COMPLIANCE WITH FEDERAL REGULATIONS	15
CONCLUSION	16

TABLE OF AUTHORITIES

Cases	PAGE
AAACON Auto Transport v. State Farm Mutual Automobile Insurance Co., 537 F.2d 648 (2nd Cir. 1976), *cert. denied* 429 U.S. 1042 (1977) ..	10
Adams Express Co. v. Croninger, 226 U.S. 491, 33 S.Ct. 148, 59 L.Ed. 1137 (1913)	6
Anton v. Greyhound Van Lines, Inc., 591 F.2d 103 (1st Cir. 1978)	15
Caspe v. AAACON Auto Transport, Inc., 658 F.2d 613 (8th Cir. 1981)	11
Chandler v. Aero Mayflower Transit Company, Inc., 374 F.2d 129 (4th Cir. 1967)	13
Conoco, Inc. v. Andrews Van Lines, Inc., 526 F. Supp. 722 (U.S. D.C. Okla. 1981)	14
Galveston, Harrisburg & San Antonio Railway Co. v. Woodbury, 254 U.S. 357, 41 S.Ct. 114, 65 L. Ed. 301 (1920)	8
Hillsborough County v. Automated Medical Laboratories, Inc., 471 U.S. 707 (1985)	8
Hubbard v. Allied Van Lines, Inc., 540 F.2d 1224 (4th Cir. 1976)	13
Hunter v. United Van Lines, 746 F.2d 635 (9th Cir. 1984), *cert. denied* 474 U.S. 863 (1985)	11
Johnson v. Bekins Moving & Storage Co., 389 P.2d 109 (Idaho 1963), *cert. denied* 379 U.S. 913 (1964)	14
L.E. Whitlock Truck Service, Inc. v. Regal Drilling Co., 333 F.2d 488 (1964)	12

Litvak Meat Company v. Baker, 446 F.2d 329 (10th Cir. 1971) 11

Marquette Cement Manufacturing Co. v. Louisville and Nashville Railroad Co., 406 F.2d 731 (6th Cir. 1969) 11

R.H. Fulton v. Chicago Rock Island and Pacific Railroad Company, 481 F.2d 326 (8th Cir. 1973) 11

Reed v. AAACON Auto Transport, Inc., 637 F.2d 1302 (10th Cir. 1981) 12

Rice v. Santa Fe Elevator Corp., 331 U.S. 218, 67 S.Ct. 1146 (1947) 8

Robinson v. Ralph G. Smith, Inc., 735 F.2d 186 (6th Cir. 1986) 15

Rocky Ford Moving Vans, Inc. v. United States, 501 F.2d 1369 (8th Cir. 1974) 14

Seetapun v. Illinois-California Express, Inc., 518 P.2d 885 (Okla. 1973) 14

Sorenson-Christian Industries, Incorporated v. Railway Express Agency, Incorporated, 434 F.2d 867 (4th Cir. 1978) 14

Southeastern Express Co. v. Pastime Amusement Co., 229 U.S. 28, 57 S.Ct. 73, 81 L.Ed. 20 (1936) 13

Southern Pacific Co. v. Crenshaw, 5 Ga.App. 675, 63 S.E. Rep. 865 ..... 8, 9

Texas & Pac. Ry. v. Abilene Cotton Mills, 204 U.S. 426 (1906) 7

W.D. Lawson & Company v. Penn Central Company, 456 F.2d 419 (6th Cir. 1972) 11

Wirth v. Silvretta, 575 F.Supp. 1274 (N.D. Ill. 1984) 7

Other Authorities

Statutes:

49 U.S.C. Sec. 10103 7

49 U.S.C. Sec. 10730 9

49 U.S.C. Sec. 11707 6

38 Stat. 1196-97 (1915) 9

39 Stat. 441 (1916) 9

Federal Regulations:

49 C.F.R. Sec. 1056.6(a) and (b) 15

49 C.F.R. Sec. 1056.5 3

49 C.F.R. Sec. 1056.3 2

49 C.F.R. Sec. 1307.201(c) 15

Congressional Proceedings:

Report of the Committee on the Judiciary, House of Representatives, Sept. 1, 1977 ... 7

No. 87-970

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

EDWARD and NANCY HUGHES,

Petitioners,

v.

UNITED VAN LINES, INC.,
and 291 SISSER BROS., INC.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

RESPONDENTS' BRIEF IN OPPOSITION

STATEMENT OF THE CASE

In the Spring of 1982, petitioners Edward and Nancy Hughes moved their family from Medford, New Jersey to Chicago, Illinois, where Edward Hughes had accepted a new position of employment.

The arrangements for the movement of their household goods were made through Larry Haney, a friend of the Hughes and an employee of a United Van Lines agent located in Dallas, Texas. (R. 139). Haney had been involved in the arrangements for three prior Hughes moves in 1977, 1978 and 1981. (R. 120-123). Prior to 1977, the Hughes had moved on at least seven other occasions in connection with the employment of Edward Hughes. (R. 210).

Upon being contacted by the Hughes about the move from Medford, New Jersey to Chicago, Illinois, Larry Haney arranged for 291 Sisser Bros., Inc., a United Van Lines agent in New Jersey, to meet with the Hughes to plan the move to Chicago. United Van Lines is a Missouri corporation engaged in the business of common carrier of used household goods and other commodities in interstate commerce under authority of a Certificate of Public Convenience and Necessity issued by the Interstate Commerce Commission. United conducts its business through an extensive agency structure whereby local agents render services and provide equipment and personnel under the direction of United and subject to and in conformity with the regulations of the Interstate Commerce Commission.

Cy Pavliga, a sales representative for 291 Sisser Bros., met with Nancy Hughes and conducted a survey of the items to be moved. (R. 258). Pavliga furnished Nancy Hughes with various I.C.C. prescribed explanatory pamphlets and discussed with her the manner in which the move would be performed (R. 261). Pavliga then completed the I.C.C. prescribed Estimated Cost of Services form (49 C.F.R. 1056.3) and explained to Nancy Hughes her right to declare a value for her goods and the liability assumed by the carrier based on that declared value. (R.

250-254). Nancy Hughes selected tariff prescribed full value protection with a maximum carrier liability of $3.00 per pound of the shipment weight. Based on the estimated shipment weight of 12,000 pounds, Nancy Hughes declared a value of $36,000 for the shipment. Pavliga specifically asked her whether she was satisfied that $36,000 would be an adequate value for the shipment and she answered in the affirmative. (R. 250-260). Nancy Hughes was given a copy of the estimate. (R. 124).

Subsequently, Nancy Hughes was sent an Order for Service form, also I.C.C. prescribed (49 C.F.R. 1056.5), together with a note requesting that she sign in two places and declare a shipment value. Nancy Hughes signed the Order for Service and inserted $3.00 per pound as her declared value for the shipment.

Following the loading of the shipment on June 25, 1982, petitioner Edward Hughes signed both the bill of lading and the inventory of the items shipped. (R. 220-223). Edward Hughes had signed bills of lading and inventories on numerous other occasions and he knew what he was signing. Even so, he signed the bill of lading in two places, one of which was the blank for the declared value. Although this omission literally would have limited United's liability to $1.25 per pound as stated on the bill of lading, United has conceded petitioners' stated intent to declare a value of $3.00 per pound.

When the shipment was weighed on board the vehicle, the weight was 17,060 pounds, or approximately 5,000 pounds in excess of the estimated weight. Because the Hughes had declared a value of $3.00 per pound, the declared value, and United's liability, were increased from $36,000 to $51,180.

While in transit on the Ohio Turnpike, a fire of undetermined origin occurred on board the moving van, and a substantial portion of the Hughes shipment was destroyed. (R. 196). The van was driven to a turnpike "oasis" where the fire was extinguished by the local fire department. United made arrangements for the handling and further transportation of the salvageable portion of the shipment with one of its local Ohio agents. (R. 208). Respondent United conceded its liability for the declared value of $51,180.

United paid the Hughes $25,000 and attempted to pay the balance of $26,180. However, petitioners rejected this offer of payment and, on May 21, 1984, filed suit for $111,848.31. Prior to the filing of the suit, the Hughes had received a total of $86,087.41 against loan receipts from their home insurers. Petitioners subsequently amended their complaint against respondents by adding eight state and common law counts and increasing the ad damnum for shipment loss and/or damage to $230,000, plus other amounts for various additional counts.

The case was tried to the bench, at which time respondents contested all of the essential allegations of the complaint, including the alleged value of petitioners' goods damaged and destroyed. The District Court held that the Carmack Amendment to the Revised Interstate Commerce Act preempts state and common law remedies and that the liability of respondents had been properly limited under the Act, and entered judgment for petitioners for the balance due on their declared value.

SUMMARY OF ARGUMENT

The Supreme Court of the United States has consistently held that the Carmack Amendment to the (Revised) Interstate Commerce Act preempts state and common law remedies for loss of and/or damage to interstate shipments. The circuit courts have been virtually uniform in their allegiance to this precedent. Only the Tenth Circuit appears to have departed from this mandate. However, respondents submit that the Tenth Circuit deviation is more imagined than real, and does not constitute such a split among circuits as to invoke the certiorari discretion of the Supreme Court. Indeed, the recodification of the Interstate Commerce Act in 1978, at which time the "existing law" proviso was removed from the Carmack Amendment and placed in a separate section, may well render moot any perceived difference on the part of the Tenth Circuit. Finally, petitioners' claimed errors in the decision of the Seventh Circuit in the instant case are without foundation and, if acknowledged, would work to destroy the substance of the Carmack Amendment.

REASONS FOR DENYING THE WRIT

I.

THE SUPREME COURT HAS CONSISTENTLY RULED THAT THE CARMACK AMENDMENT TO THE INTERSTATE COMMERCE ACT PREEMPTS STATE AND COMMON LAW REMEDIES FOR LOSS OF AND /OR DAMAGE TO INTERSTATE SHIPMENTS.

Seven years after the enactment of the Carmack Amendment to the Interstate Commerce Act in 1906, 49 U.S.C. 11707, the Supreme Court addressed the question of whether the Amendment preempts state and common law remedies for loss and/or damage to interstate shipments. *Adams Express Co. v. Croninger*, 226 U.S. 491, 33 S.Ct. 148, 59 L.Ed. 1137 (1913). The specific issue addressed by the Court was whether it was the intention of Congress to permit shippers to rely upon any right of action against a carrier conferred by existing state law, pursuant to a proviso of the Carmack Amendment which stated:

> "Provided further, that nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action which he has under the existing law."

Alluding to the varied, inconsistent and often confusing patchwork of state regulation of carrier liability which was the cornerstone of Carmack, the Court responded to the claim by holding:

> "This view is untenable. It would result in the nullification of the regulation of a national subject and operate to maintain the confusion of the diverse regulation which it was the purpose of Congress to put an end to." *Croninger* at 507.

Throughout the history of Carmack, some courts and litigants have noted that state regulation, as opposed to common law, was the preemption issue in *Croninger*. See *Wirth v. Silvretta*, 575 F.Supp. 1274 (N.D. Ill. 1984). However, in the 1906 case of *Texas & Pac. Ry. v. Abilene Cotton Mills*, 204 U.S. 426, the Court construed a similar proviso in another section of the Interstate Commerce Act by ruling that it could "not in reason be construed as continuing in a shipper a common law right the existence of which would be inconsistent with the provisions of the act. In other words, the act cannot be said to destroy itself."

Croninger cites, relies upon and adopts this rationale, so that it is unnecessary to indulge in inference with respect to *Croninger's* impact on common law remedies. The Court has made it abundantly clear that Carmack preempts both state regulation and common law causes of action.

The reasoning of the Supreme Court is further supported by the 1978 recodification of the Interstate Commerce Act, at which time the "proviso" was removed from the Carmack Amendment and placed in a separate section. 49 U.S.C. Sec. 10103. The recodification was specifically not intended by Congress to effect substantive change, and the removal of the proviso from Carmack accordingly was done with full knowledge of the Court's holdings in *Croninger* and *Abilene. Report of the Committee on the Judiciary, House of Representatives, Sept. 1, 1977.*

Petitioners in the instant case contend that the Seventh Circuit invalidated the proviso (49 U.S.C. Sec. 10103) by holding that it does not preserve a shipper's common law rights. However, the Seventh Circuit merely follows *Cron-*

inger, which found it impermissible and contrary to the intent of Congress for the proviso to destroy the act itself. Indeed, the decision of the Seventh Circuit (Petitioners' Appendix 1) makes it clear that the Supreme Court ruling in *Croninger* is consistent with other Supreme Court decisions inferring preemption intent where Congress has legislated so comprehensively as to fully occupy the field. *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230, 67 S.Ct. 1146, 1152 (1947); *Hillsborough County v. Automated Medical Laboratories, Inc.*, 471 U.S. 707 (1985).

Petitioners also contend that the Seventh Circuit decision erroneously holds that the purpose of the Carmack Amendment is to establish uniform federal guidelines for interstate shipments, when the purpose is to impose absolute liability on common carriers for loss or damage to a shipper's goods. As noted in all of the cases dealing with Carmack preemption, uniform regulation is precisely the basis for the enactment of Carmack. See *Galveston, Harrisburg & San Antonio Railway Co. v. Woodbury*, 254 U.S. 357, 41 S.Ct. 114, 65 L.Ed. 301 (1920). One of the more articulate expositions of the reason for uniformity is contained in the case of *Southern Pacific Co. v. Crenshaw*, 5 Ga.App. 675, 687, 63 S.E. Rep. 865:

> "Some states allowed shippers to exempt themselves from all or a part of the common law liability by rule, regulation, or contract; others did not; the Federal courts sitting in the various states were following the local rule, a carrier being held liable in one court when under the same state of facts he would be exempt from liability in another; hence this branch of interstate commerce was being subjected to such a diversity of legislation and judicial holding that it was practically impossible for a shipper engaged in a business that extended beyond the confines of his own State, or for a carrier whose lines were extensive, to know without considerable investigation and trouble, and even then oftentimes with little certainty, what would be the carrier's actual responsibility as to goods delivered to it for transportation from one State to another. The congressional action has made an end to this diversity; for the national law is paramount and supersedes all state laws as to the rights and liabilities and exemptions created by such transaction. This was doubtless the purpose of the law; and this purpose will be effectuated, and not impaired or destroyed by the state court's obeying and enforcing the provisions of the Federal statute where applicable to the fact in such cases as shall come before them."

Petitioners appear to argue that there is an inconsistency between uniform federal guidelines and full liability for actual loss or damage. In fact, these concepts follow one from the other. They are necessarily joined in purpose and each serves to justify the other. There is no conflict among the courts as to the basic purpose of the Interstate Commerce Act. In addition, petitioners' reliance on the First Cummins Amendment, Act of March 4, 1915, Ch. 176, Sec. 1, 38 Stat. 1196-97, is misplaced. Proper interpretation of the legislative history requires that the first Cummins Amendment of 1915 be read in conjunction with the 1916 Cummins Amendment (the "Second Cummins Amendment"), 39 Stat. 441 (1916).

The practical effect of the first Cummins Amendment of 1915 was to abolish the entire system of released rates based upon agreed valuation as opposed to actual value. To correct this, and to restore conformity with the tenor of Carmack as originally enacted, the second Cummins Amendment was enacted in 1916. This amendment again authorized carriers to limit their liability and the amount of recovery by the establishment of transportation rates under which the liability of the carrier is limited to a property value established by written declaration or by a written agreement. Sec. 49 U.S.C. Sec. 10730.

Thus, with the exception of the one year period between the two Cummins Amendments, carriers have always been permitted to limit their liability under Carmack where the shipper declares a value or agrees in writing to a released value for the property.

Contrary to the assertion of petitioners, a reading of the legislative history and the many cases in connection with the Carmack Amendment makes it clear that there is no confusion among the courts as to the purpose of Carmack. Moreover, the fact that the Carmack Amendment has historically permitted liability limitations is ample proof in and of itself that Congress did not intend that shippers have recourse to state and common law remedies.

II.

THERE IS NOT SUCH A CONFLICT BETWEEN THE DECISIONS OF THE CIRCUITS AS TO WARRANT CERTIORARI.

The principal basis for petitioners' request for writ is their claimed split among the circuits as to Carmack preemption. Petitioners allege that the Second, Sixth, Eighth, Ninth and Tenth Circuits stand in contrast to the decision of the Seventh Circuit in the instant case. However, with the exception of the Tenth Circuit, there is no substantive split among the circuits—and the perceived split by the Tenth Circuit is more imagined than real.

Petitioners' Second Circuit case involves the validity of an arbitration clause in a bill of lading which the court invalidated precisely because of its lack of conformity with the Interstate Commerce Act. *AAACON Auto Transport v. State Farm Mutual Automobile Insurance Co.*, 537 F.2d 648 (2nd Cir. 1976), *cert. denied* 429 U.S. 1042 (1977). The Sixth Circuit holds that Carmack preempts, *W.D. Lawson & Company v. Penn Central Company*, 456 F.2d 419 (1972), and the case relied upon by petitioners does not question the preemption doctrine. *Marquette Cement Manufacturing Co. v. Louisville and Nashville Railroad Co.*, 406 F.2d 731 (1969). The Eighth Circuit rules that suits against interstate carriers are governed by the Carmack Amendment. *R.H. Fulton v. Chicago Rock Island and Pacific Railroad Company*, 481 F.2d 326 (1973). Petitioners' cited precedent was decided under the Carmack Amendment and it does not imply disagreement with the Seventh Circuit in the instant case. *Caspe v. AAACON Auto Transport, Inc.*, 658 F.2d 613 (1981). Petitioners' Ninth Circuit case involves a jurisdictional issue under the removal statute and does not indicate that that circuit would rule against Carmack preemption. *Hunter v. United Van Lines*, 746 F.2d 635 (1984), *cert. denied* 474 U.S. 863 (1985).

Although the Tenth Circuit is generally regarded as holding against Carmack preemption, such a conclusion is not altogether clear from a reading of its cases. The Tenth Circuit "conflict" appears to emanate from its decision in the 1971 case of *Litvak Meat Company v. Baker*, 446 F.2d 329. *Litvak* involved a rather unique factual circumstance in that the shipper filed suit against two participating carriers—a railroad and a trucking company. However, because venue under the Carmack Amendment did not lie against the railroad in Colorado, the district where the suit was brought, the Tenth Circuit held that the shipper could proceed against the railroad on a cause of action for negligence. The Circuit Court accordingly permitted the shipper to proceed against the trucking company under the Carmack Amendment and against the railroad for common law negligence.

The rationale employed by the court was that the Carmack Amendment was in any event a codification of the common law and that, although a common law action sounding in negligence requires that the shipper demonstrate damage caused by a specific carrier, there is no reason why a shipper should not be permitted to avail himself of that route if he so chooses. Respondents submit that there is nothing enigmatic about the Tenth Circuit ruling. It represents an understandable effort by the court to prevent the vagaries of venue from forestalling resolution of a just claim. More important, it is not authority which would permit unlimited state and common law causes of action. The decision is limited to a cause of action for common law negligence, and only because the Carmack Amendment is a codification of the common law rule which allowed recovery for negligence.

In support of its position, the court cited its earlier decision in *L.E. Whitlock Truck Service, Inc. v. Regal Drilling Co.*, 333 F.2d 488 (1964), in which it stated that "the Carmack Amendment thus does not change the common law rule" and that it "continues in effect the common law applicable to the liability of carriers". However, this proposition was in explanation of the shipper's burden of proof and allowable damages under both the Carmack Amendment and common law. There is not a scintilla of indication that *Carmack* does not preempt state and common law remedies other than those embraced within the codification. Although *Litvak* appears to bootstrap the *Whitlock* opinion in order to overcome the venue defect as to the railroad, it did not propose to extend its holding beyond that which was folded into Carmack by the codification of the common law rule.

Petitioners offer the case of *Reed v. AAACON Auto Transport, Inc.*, 637 F.2d 1302 (1981), as a Tenth Circuit decision purportedly demonstrating that Circuit's holding

that Carmack does not preempt common law causes of action. However, the issues in that case were essentially limited to recoverable damages. As to the liability limitation asserted by the carrier, the court correctly held that it was void because the carrier failed to maintain transportation rates dependent upon declared shipment value, as required by Carmack. The *Reed* court also acknowledged the recoverability of punitive damages, erroneously relying on a Fourth Circuit case that was not a Carmack case in the first instance. *Hubbard v. Allied Van Lines, Inc.*, 540 F.2d 1224 (1976). *Reed* appears to be a single exception to the rule that punitive damages are not recoverable under Carmack. See *Chandler v. Aero Mayflower Transit Company, Inc.*, 374 F.2d 129 (4th Cir. 1967). Moreover, it is questionable whether *Reed* would have considered the punitive damage issue if the asserted liability limitation had been upheld under Carmack.

In any event, since the 1978 removal of the "existing law" proviso to another section of the Act, it appears that no court has applied the proviso to the Carmack Amendment, and respondents accordingly submit that there is presently not such a conflict among the circuits as to warrant certiorari by the Supreme Court.

III.

MATERIAL DEVIATION IS NOT A BASIS FOR INVALIDATING A LIABILITY LIMITATION UNDER THE CARMACK AMENDMENT.

The courts generally agree that only fraud will vitiate an agreement to limit liability under Carmack. *Southeastern Express Co. v. Pastime Amusement Co.*, 229 U.S. 28, 57 S.Ct. 73, 81 L.Ed. 20 (1936). However, as pointed out by petitioners, there is a line of state cases which have invalidated liability limitations where there was a material

or fundamental and unjustified deviation from the shipping agreement as to the mode or manner in which the shipped goods or articles were packed, stowed or transported, if the same caused the shipment injury.

Thus, the failure of a carrier to perform special protective packing for electronic equipment, for which the shipper paid an additional charge, rendered a liability limitation ineffective as to that equipment. *Johnson v. Bekins Moving & Storage Co.*, 389 P.2d 109 (Idaho 1963), *cert. denied* 379 U.S. 913 (1964). And the loss of goods in a fire on a moving van caused by the carrier's loading on the van of a highly volatile substance was grounds for invalidating a liability limitation where the substance caused the fire. *Seetapun v. Illinois-California Express, Inc.*, 518 P.2d 885 (Okla. 1973).

However, these "material deviation" cases have been expressly overruled by the federal courts. *Rocky Ford Moving Vans, Inc. v. United States*, 501 F.2d 1369 (8th Cir. 1974); *Conoco, Inc. v. Andrews Van Lines, Inc.*, 526 F.Supp. 722 (U.S. D.C. Okla. 1981); *Sorenson-Christian Industries, Incorporated v. Railway Express Agency, Incorporated*, 434 F.2d 867 (4th Cir. 1978). The material deviation doctrine therefore has been rejected by the federal judiciary and, even if it had not been so overruled, the facts of the instant case would not give rise to liability under that doctrine. Respondents' conduct in the instant case was exhaustively examined by the District Court, and there were no findings of fire cause, shipment abandonment, theft by respondents' employees or any of the other matters charged by petitioners.

IV.

CARRIERS SHOULD NOT BE HELD TO A LEVEL OF STRICT COMPLIANCE WITH FEDERAL REGULATIONS.

Petitioners contend that respondents did not strictly comply with the applicable regulations governing the form and content of the bill of lading. 49 C.F.R. Sec. 1056.6(a) and (b); 49 C.F.R. Sec. 1307.201(c). They therefore argue that any liability limitation contained in the bill of lading is invalid.

Both the District Court and the Seventh Circuit earnestly considered petitioners' contentions and concluded that respondents had adequately complied with the regulations and that petitioners had suffered no harm traceable to the shipment documentation.

Petitioners quote the case of *Anton v. Greyhound Van Lines, Inc.*, 591 F.2d 103 (1st Cir. 1978), out of context. *Anton* did not deal with the content or format of shipment documentation. The *Anton* decision focused on the carrier's failure to issue its bill of lading, a necessary element for the limitation of liability under Carmack. The controlling law as to tariff and regulation compliance is set forth in the decision of the Seventh Circuit in the instant case. *Robinson v. Ralph G. Smith, Inc.*, 735 F.2d 186 (6th Cir. 1986). Although *Robinson* follows the substantial compliance rule, the Seventh Circuit concluded that the facts of the case before it were such that it was not necessary to determine whether it should adopt the rule. The record is clear that respondents complied with the regulations and that petitioners were in no manner injured by any aspect of the regulations governing shipment documentation.

CONCLUSION

The District Court and the Court of Appeals for the Seventh Circuit have correctly applied the law to the facts of this case. There is no question as to their understanding of the purpose of the Carmack Amendment or their interpretation of Supreme Court authority. Throughout the course of this litigation, petitioners have consistently attempted and failed to prove egregious conduct on the part of respondents. Respondents respectfully submit that none of the questions raised by petitioners, including the alleged split among circuits, should be sufficient to warrant certiorari.

Respectfully submitted,

JAMES W. TALLANT
ARTHUR A. SULLIVAN *
JAMES W. TALLANT &
ASSOCIATES, LTD.
One North LaSalle Street
Suite 2140
Chicago, Illinois 60602
(312) 332-0002

Attorneys for Respondents

* Counsel of Record